IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO:L.P.A.No.71 of 2005

DATE OF DECISION:July 23, 2007

SATYA PAL SHARMA

.....PETITIONER
through Mr. Manohar Lal,
Advocate

VERSUS

SMT. SATWANT KAUR

.....RESPONDENT
through Mr. B.S.Rana,
Additional A.G.,Haryana.

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUTICE
HON'BLE MR. JUSTICE MAHESH GROVER

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment?**

2. **To be referred to the Reporters or not?**

3. **Whether the judgment should be reported in the Digest?**

VIJENDER JAIN, CHIEF JUSTICE (ORAL)

The challenge made in the Letters Patent Appeal is against the order passed by the learned Single Judge allowing a modification/reviewing the order dated 11.11.2002 on 18.03.2005. The order, which was passed by learned Single Judge on 16.11.2002, was to the following effect:-

> "This order shall dispose of CWP Nos.14321 of 1993, 3875 of 199, 3473 of 1994, 3474 of 1994, 1851 of 1994, 1852 of 1994, 13723 of 1994 and 2441 of 1994 as the common question of law and facts are involved in the aforesaid cases.
>
> It is not in dispute that the controversy involved in these cases is squarely covered on facts as well as on law by

a judgment of the Division Bench rendered by this Court in CWP No.1402 of 1995 decided on December-,1995 titled Dharamvir Vs. State of Haryana and another.

Learned counsel appearing for the parties have also agreed that in fact the aforesaid controversy in Dharamvir's case supra has also arisen from the same advertisement and the selection process as is involved in the present cases.

The Division Bench while allowing the aforesaid Writ Petition has observed as follows:-

> "The learned counsel for the petitioner contended that as he was Graduate with Geography and also a Bachelor in Education on the date of submission of the application, he is eligible to be appointed as a Social Studies Master. In the Punjab Education Service Class III School Cadre Rules, 1955, the education qualifications required for appointment to the post of S.S.Master is only B.A. Or M.A/M.Sc. SSTC or B.T. Senior Basic Trained. The petitioner possess the degree of B.A. And also Bachelor Degree in teaching. Therefore, the petitioner fulfilled the qualifications as prescribed in the advertisement issued for filling up the posts of S.S.Masters is contrary to the rules. The rules do not provide that the candidate must be a graduate with any of the two subjects namely, History, Political Science, Geography and Sanskrit. Therefore, it is clear that the advertisement runs contrary to the rule. The rules

are statutory rules and therefore, no advertisement can be issued contrary to the rules and no additional qualification not mentioned in the rules can be prescribed for appointment. As the petitioner is a Graduate in Geography and also having a degree of Bachelor in teaching, we are of the opinion that he fulfilled the qualifications prescribed for the post under the rules. He is eligible for being considered for the post of Social Studies Master. The rejection of the candidature of the petitioner on the ground that he did not possess the qualifications as per the advertisement, cannot be justified under law. We are, therefore, of the opinion that the petitioner shall be considered for appointment if he is otherwise found suitable."

In these circumstances, the present petition is allowed. The respondents are directed to issue the letters of appointment to the petitioners forthwith as per their merit. For all intents and purposes, the appointment of the petitioners shall relate back to the date with effect from which others, who had participated in the same process of selection were appointed except their salary and emoluments to which they would be entitled to with effect from the date of decision of the present petition. Necessary orders in this regard be issued by the respondents within a period two months from the date a certified copy of this order is received by them. No costs.

The review of the order was made pursuant to an application filed by the State of Haryana inter-alia alleging that Satya Pal Sharma the

appellant was not given any interview marks as he was ineligible.

We have repeatedly asked the State of Haryana that this fact that appellant was not eligible was also in question before the learned Single Judge when the order in the writ petition was passed in the first instance on 16.11.2002. The record was also with the State. After due consideration and relying upon the judgment of a Division Bench of this Court in C.W.P.No.1402 of 1995 titled Dharamvir Vs. State of Haryana and another. The learned Single Judge allowed the writ petition on the basis of same record, same averments, which was sought to be used at the time of review of the order which was passed by the learned Single Judge dated 18.03.2005.

The review Court has a very limited role to play. It was not a case of the respondent that these facts were not in their knowledge and, therefore, could not be produced before the Court. These were facts of which only the State had the knowledge as the record was with them. The Review Court clearly fell in error by allowing the review petition in view of there being no new material before it which could invite the exercise of such jurisdiction. If the respondent was aggrieved by the order passed in the writ petition, they had a remedy of appeal. The fault clearly lay with the State of Haryana and for that the petitioner cannot be punished.

Hence to our minds, the order of the review Court is unsustainable in the eyes of law. Therefore, we allow the appeal and set aside the impugned order.

(VIJENDER JAIN)
CHIEF JUSTICE

July 23, 2007 **(MAHESH GROVER)**
nt **JUDGE**